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4 EPIDEMIC SOUND, AB,  
5 Plaintiff,  
6 v.  
7 META PLATFORMS, INC.,  
8 Defendant.

9 Case No. 22-cv-04223-JSC  
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**ORDER RE: JOINT DISCOVERY  
DISPUTE CONCERNING FEBRUARY  
22, 2025 CLAWBACK OF  
DOCUMENTS**

Re: Dkt. No. 249

On March 10, 2025, the parties filed a discovery dispute joint letter related to Meta’s clawback of 15 documents. (Dkt. No. 249.) Epidemic asserts the clawback was improper because the documents “uniformly lacked attorneys as parties to the communications and reflected factual, business information that is indisputably relevant and discoverable in this action.” (Dkt. No. 249 at 2.) Meta responds “each of the documents that Epidemic is challenging either relays legal advice from counsel, reveals the content of privileged communications between Meta’s employees and its counsel, or reflects work done at the direction of counsel in anticipation or furtherance of this litigation.” (*Id.* at 4.) Pursuant to the stipulated clawback order in this case, in the event of a challenge to the producing party’s claim of privilege, “the producing party will provide the clawed back document for purposes of an in camera review.” (Dkt. No. 73 at 4.)

The Court reviewed the 15 documents at issue, which Meta seeks to clawback on the basis of work-product protection and/or attorney-client privilege. After carefully considering the documents and the parties’ submissions, the Court concludes oral argument is not required, *see* N.D. Cal. Civ. L.R. 7-1(b), and rules as set forth below.

**I. WORK-PRODUCT DOCTRINE**

Meta asserts four of the documents are shielded by the work-product doctrine, which

1 “protects from discovery documents and tangible things prepared by a party or his representative  
2 in anticipation of litigation.” *United States v. Richey*, 632 F.3d 559, 567 (9th Cir. 2011) (quotation  
3 marks omitted). To qualify for work-product protection, documents must have two  
4 characteristics: (1) “they must be prepared in anticipation of litigation or for trial” and (2) they  
5 must be prepared by or for another party or by or for that other party’s representative.”” *In re*  
6 *Grand Jury Subpoena (Mark Torf/Torf Env’t Mgmt.)*, 357 F.3d 900, 907 (9th Cir. 2004). Given  
7 the “realit[y] that attorneys often must rely on the assistance of investigators and other agents in  
8 the compilation of materials in preparation for trial[,] . . . the doctrine protect[s] material prepared  
9 by agents for the attorney as well as those prepared by the attorney himself.” *Id.* “Thus, the  
10 doctrine may be applied to documents created by non-attorneys so long as they are prepared ‘by or  
11 for another party or its representative’ and they are created ‘in anticipation of litigation.’” *Lewis v.*  
12 *Wells Fargo & Co.*, 266 F.R.D. 433, 440 (N.D. Cal. 2010). The party resisting production of  
13 material based on the work product privilege bears the burden of proving that the privilege applies.  
14 *Hernandez v. Tanninen*, 604 F.3d 1095, 1102 (9th Cir. 2010).

15 Meta has met its burden as to the following documents, which convey messages between  
16 non-legal employees gathering information and preparing for settlement discussions with  
17 Epidemic:

- 18 • **META-EPDMS\_00187830**
- 19 • **META-EPDMS\_00260111**

20 These documents meet both criteria for work-product protection: (1) they were prepared in  
21 anticipation of litigation, and (2) prepared by and for a party. Put another way, these chats would  
22 not have been initiated “in substantially similar form but for the prospect of litigation.” See  
23 *Richey*, 632 F.3d at 567-68.

24 As to the following documents, Meta has not met its burden:

25 • **META-EPDMS\_00282076**: Meta explains this is a chat between in-house  
26 attorneys. There is no indication the discussion occurred in anticipation of this  
27 litigation as opposed to in the normal course of business. But as described below,  
28 this document is protected by attorney-client privilege.

- 1           • **META-EPDMS\_00282210:** As Meta describes, this is a spreadsheet “related to  
2           workstreams.” (Dkt. No. 249-2 at 3.) Meta has not established the spreadsheet was  
3           prepared in anticipation of litigation as opposed to in the normal course of business.

4           **II. ATTORNEY-CLIENT PRIVILEGE**

5           Meta also asserts attorney-client privilege. “The attorney-client privilege protects  
6           confidential disclosures made by a client to an attorney in order to obtain legal advice . . . as well  
7           as an attorney’s advice in response to such disclosures.” *In re Grand Jury Investigation*, 974 F.2d  
8           1068, 1070 (9th Cir. 1992). It recognizes that “sound legal advice or advocacy serves public ends  
9           and that such advice or advocacy depends upon the lawyer’s being fully informed by the client.”  
10           *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981). The privilege is “narrowly and strictly  
11           construed.” *United States v. Gray*, 876 F.2d 1411, 1415 (9th Cir. 1989). The party asserting the  
12           attorney-client privilege has the burden of proving that the privilege “applies to a given set of  
13           documents or communications.” *In re Grand Jury Investigation*, 974 F.2d at 1070.

14           Meta has met its burden with respect to the following documents:

- 15           • **META-EPDMS\_00281048:** The redacted portion describes a meeting with legal,  
16           including details about what was discussed. “[C]ommunication between nonlegal  
17           employees in which the employees discuss or transmit legal advice given by  
18           counsel” are protected by attorney-client privilege because they “reveal privileged  
19           communications.” *United States v. ChevronTexaco Corp.*, 241 F. Supp. 2d 1065,  
20           1077 (N.D. Cal. 2002).
- 21           • **META-EPDMS\_00281094:** The redacted portion relays legal advice provided to  
22           the Rights Manager team. *See id.*
- 23           • **META-EPDMS\_00281927:** As Meta explains, the redacted information includes  
24           “internal drafts of deal provisions written by attorneys.” (Dkt. No. 249-2 at 3.)
- 25           • **META-EPDMS\_00282076:** This email thread between “two Meta in-house  
26           attorneys” describes legal advice. (Dkt. No. 249-2 at 3.)
- 27           • **META-EPDMS\_00277692:** The redacted portions of the document reveal legal  
28           advice sought.

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2 Meta has not met its burden with respect to the following documents:

- 3     • **META-EPDMS\_00282300:** While Meta asserts the redactions reveal the content  
4         of conversations between Meta employees and attorneys, the document provides no  
5         indication the redacted information was relayed by legal counsel.
- 6     • **META-EPDMS\_00187835:** There is no indication the non-legal employees in  
7         this chat are discussing or seeking legal advice. While one employee says “[l]et me  
8         ask” in response to a question, the employee does not say who she asked, and Meta  
9         did not provide that information separately.
- 10    • **META-EPDMS\_00281864:** Page 281877 relays guidance from counsel and is  
11         therefore privileged. Otherwise, Meta’s designations are overbroad. Mere  
12         references to “legal,” contracts, or upcoming meetings with legal do not convert  
13         meeting notes into either “confidential disclosures” or “attorney advice in response  
14         to such disclosures.” *See In re Grand Jury Investigation*, 974 F.2d at 1070.
- 15    • **META-EPDMS\_00282003:** The following pages relay guidance from legal  
16         counsel and are therefore privileged: 282004, 282006, 282010, and 282045.  
17         Otherwise, Meta’s designations are overbroad.
- 18    • **META-EPDMS\_00282551:** The following pages relay guidance from legal  
19         counsel and are therefore privileged: 282557, 282559, 282577, 282631, 282648,  
20         282650, 282666, 282670, 282672, 282678, 282680, 282685, 282691, 282695,  
21         282705, 282709, 282716, 282722, 282724, 282727, 282736, 282746, 282764,  
22         282765, 282766, and 282768. Otherwise, Meta’s designations are overbroad.
- 23    • **META-EPDMS\_00282206:** Meta explains the document was withheld “because  
24         the stated goals of the document include providing information to in-house Meta  
25         attorneys for the purposes of providing legal advice” and the document contains  
26         meeting notes “that relay communications with Meta’s attorneys.” (Dkt. No. 249-2  
27         at 3.) In reviewing the document, it is not clear which parts—if any—constitute  
28         legal advice or communications from attorneys. So, Meta has not met its burden.

1                   Meta's other justification for withholding the document—that it says  
2                   “PRIVILEGED & CONFIDENTIAL”—is also insufficient.

- 3                   • **META-EPDMS\_00282209:** This document is “related to META-  
4                   EPDMS\_00282206” and Meta provides the same justification for withholding it.  
5                   (Dkt. No. 249-2 at 3.) As the Court cannot discern what—if anything—is legal  
6                   advice in this spreadsheet, Meta has not met its burden.  
7                   • **META-EPDMS\_00282210:** That “legal” is the “owner[] of [a] workstream”  
8                   listed in this spreadsheet does not convert that workstream into legal advice or an  
9                   attorney disclosure.

10                  For the reasons stated above, Meta shall reproduce the documents that are not privileged.  
11                  For those documents where Meta's redactions were overbroad, Meta shall further narrow its  
12                  redactions consistent with this Order and the fact that attorney-client privilege is “narrowly and  
13                  strictly construed.” *See Gray*, 876 F.2d at 1415.

14                  This Order disposes of Docket No. 249.

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16                  **IT IS SO ORDERED.**

17                  Dated: March 27, 2025

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JacQUELINE SCOTT CORLEY  
United States District Judge

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